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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
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11 ERROL JOSEPH SCORZA,

12 Plaintiff,

13 v.

14 STATE OF CALIFORNIA,

15 Defendant.
16

Case No. CV 17-04044 PA (AFM)

**ORDER DISMISSING COMPLAINT
WITH LEAVE TO AMEND**

17 On May 31, 2017, plaintiff, an inmate presently held at the California
18 Correctional Institution (“CCI”) in Tehachapi, California, filed a Complaint in this
19 *pro se* action. The Complaint, which is 180 pages long, appears to pertain to a Los
20 Angeles County Superior Court case that plaintiff seeks to have “vacated.” (ECF
21 No. 1 at 13). Plaintiff names one defendant: “State of California D/B/A Stacy
22 Gravely,” with an address in Los Angeles. (*Id.* at 1, 14.) Plaintiff claims that Stacy
23 Gravely, “representing the . . . Superior Court of the State of California knowingly
24 and willingly . . . committing [sic] a malfeasance of justice, through negligence
25 and/or inadvertence . . .” (*Id.* at 13.) Plaintiff seeks to have the case “vacated for
26 want/lack of subject matter jurisdiction” and for plaintiff to be discharged from
27 custody. (*Id.*)

28 In accordance with the terms of the “Prison Litigation Reform Act of 1995”

1 (“PLRA”), the Court has screened the Complaint prior to ordering service for
2 purposes of determining whether the action is frivolous or malicious; or fails to
3 state a claim on which relief may be granted; or seeks monetary relief against a
4 defendant who is immune from such relief. *See* 28 U.S.C. § 1915A(b); 42 U.S.C.
5 § 1997e(c)(1). The Court’s screening of the pleading under the foregoing statutes is
6 governed by the following standards. A complaint may be dismissed as a matter of
7 law for failure to state a claim for two reasons: (1) lack of a cognizable legal
8 theory; or (2) insufficient facts under a cognizable legal theory. *See Balistreri v.*
9 *Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990); *see also Rosati v.*
10 *Igbino*, 791 F.3d 1037, 1039 (9th Cir. 2015) (when determining whether a
11 complaint should be dismissed for failure to state a claim under the PLRA, the
12 court applies the same standard as applied in a motion to dismiss pursuant to Rule
13 12(b)(6)). In determining whether the pleading states a claim on which relief may
14 be granted, its allegations of material fact must be taken as true and construed in the
15 light most favorable to plaintiff. *See Love v. United States*, 915 F.2d 1242, 1245
16 (9th Cir. 1989). However, the “tenet that a court must accept as true all of the
17 allegations contained in a complaint is inapplicable to legal conclusions.” *Ashcroft*
18 *v. Iqbal*, 556 U.S. 662, 678 (2009). Nor is the Court “bound to accept as true a
19 legal conclusion couched as a factual allegation.” *Wood v. Moss*, 134 S. Ct. 2056,
20 2065 n.5 (2014) (citing *Iqbal*, 556 U.S. at 678). Rather, a court first “discounts
21 conclusory statements, which are not entitled to the presumption of truth, before
22 determining whether a claim is plausible.” *Salameh v. Tarsadia Hotel*, 726 F.3d
23 1124, 1129 (9th Cir. 2013). Then, “dismissal is appropriate where the plaintiff
24 failed to allege enough *facts* to state a claim to relief that is plausible on its face.”
25 *Yagman v. Garcetti*, 852 F.3d 859, 863 (9th Cir. 2017) (internal quotation marks
26 omitted, emphasis added).

27 Further, since plaintiff is a prisoner appearing *pro se*, the Court must construe
28 the allegations of the pleading liberally and must afford plaintiff the benefit of any

1 doubt. *See Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010); *see also Alvarez v.*
2 *Hill*, 518 F.3d 1152, 1158 (9th Cir. 2008) (because a prisoner was proceeding
3 *pro se*, “the district court was required to ‘afford [him] the benefit of any doubt’ in
4 ascertaining what claims he ‘raised in his complaint’”) (alteration in original).
5 However, the Supreme Court has held that “a plaintiff’s obligation to provide the
6 ‘grounds’ of his ‘entitle[ment] to relief” requires more than labels and conclusions,
7 and a formulaic recitation of the elements of a cause of action will not do. . . .
8 Factual allegations must be enough to raise a right to relief above the speculative
9 level . . . on the assumption that all the allegations in the complaint are true (even if
10 doubtful in fact).” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)
11 (internal citations omitted, alteration in original); *see also Iqbal*, 556 U.S. at 678
12 (To avoid dismissal for failure to state a claim, “a complaint must contain sufficient
13 factual matter, accepted as true, to ‘state a claim to relief that is plausible on its
14 face.’ . . . A claim has facial plausibility when the plaintiff pleads factual content
15 that allows the court to draw the reasonable inference that the defendant is liable for
16 the misconduct alleged.” (internal citation omitted)).

17 In addition, Fed. R. Civ. P. 8(a) states:

18 A pleading that states a claim for relief must contain: (1)
19 a short and plain statement of the grounds for the court’s
20 jurisdiction . . . ; (2) a short and plain statement of the
21 claim showing that the pleader is entitled to relief; and (3)
22 a demand for the relief sought, which may include relief
in the alternative or different types of relief.

23 (Emphasis added). Further, Rule 8(d)(1) provides: “Each allegation must be
24 simple, concise, and direct. No technical form is required.” Although the Court
25 must construe a *pro se* plaintiff’s pleadings liberally, a plaintiff nonetheless must
26 allege a minimum factual and legal basis for each claim that is sufficient to give
27 each defendant fair notice of what plaintiff’s claims are and the grounds upon
28 which they rest. *See, e.g., Brazil v. United States Dep’t of the Navy*, 66 F.3d 193,

1 199 (9th Cir. 1995); *McKeever v. Block*, 932 F.2d 795, 798 (9th Cir. 1991) (a
2 complaint must give defendants fair notice of the claims against them). If a
3 plaintiff fails to clearly and concisely set forth factual allegations sufficient to
4 provide defendants with notice of which defendant is being sued on which theory
5 and what relief is being sought against them, the pleading fails to comply with Rule
6 8. See, e.g., *McHenry v. Renne*, 84 F.3d 1172, 1177-79 (9th Cir. 1996); *Nevijel v.*
7 *Northcoast Life Ins. Co.*, 651 F.2d 671, 674 (9th Cir. 1981). A claim has
8 “substantive plausibility” if a plaintiff alleges “simply, concisely, and directly [the]
9 events” that entitle him to damages. *Johnson v. City of Shelby*, 135 S. Ct. 346, 347
10 (2014). Failure to comply with Rule 8 constitutes an independent basis for
11 dismissal of a pleading that applies even if the claims are not found to be wholly
12 without merit. See *McHenry*, 84 F.3d at 1179; *Nevijel*, 651 F.2d at 673.

13 Following careful review of the Complaint, the Court finds that it fails to
14 comply with Rule 8 because it fails to state a short and plain statement of any claim
15 that is sufficient to give defendant fair notice of what plaintiff’s claims may be or
16 the grounds upon which they rest. In addition, its allegations appear insufficient to
17 state any claim upon which relief may be granted. Accordingly, the Complaint is
18 dismissed with leave to amend. See *Rosati*, 791 F.3d at 1039 (“A district court
19 should not dismiss a *pro se* complaint without leave to amend unless it is absolutely
20 clear that the deficiencies of the complaint could not be cured by amendment.”)
21 (internal quotation marks omitted).

22 **If plaintiff desires to pursue this action, he is ORDERED to file a First**
23 **Amended Complaint no later than thirty (30) days after the date of this Order,**
24 **remedying the deficiencies discussed below.** Further, plaintiff is admonished
25 that, if he fails to timely file a First Amended Complaint, or fails to remedy the
26 deficiencies of this pleading as discussed herein, the Court will recommend that this
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1 action be dismissed without leave to amend.¹

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3 **A. State of California as a defendant**

4 The Eleventh Amendment bars federal jurisdiction over suits by individuals
5 against a State and its instrumentalities, unless either the State consents to waive its
6 sovereign immunity or Congress abrogates it. *Pennhurst State School & Hosp. v.*
7 *Halderman*, 465 U.S. 89, 99-100 (1984). To overcome this Eleventh Amendment
8 bar, the State’s consent or Congress’ intent must be “unequivocally expressed.”
9 *Pennhurst*, 465 U.S. at 99. While California has consented to be sued in its own
10 courts pursuant to the California Tort Claims Act, such consent does not constitute
11 consent to suit in federal court. *See BV Engineering v. Univ. of Calif.*, 858 F.2d
12 1394, 1396 (9th Cir. 1988). Finally, Congress has not repealed state sovereign
13 immunity against suits brought under 42 U.S.C. § 1983.

14 Here, the Complaint names only the State of California as a defendant, but
15 plaintiff may not proceed against the State of California in federal court.

16 **B. Rule 8**

17 Plaintiff’s Complaint violates Rule 8 in that the Complaint does not set forth
18 a short and plain statement of any claim. The “Complaint” primarily appears to be
19 comprised of exhibits, but one section is entitled “State of Issues.” That section,
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21 ¹ Plaintiff is advised that this Court’s determination herein that the allegations in
22 the Complaint are insufficient to state a particular claim should not be seen as
23 dispositive of that claim. Accordingly, although this Court believes that you have
24 failed to plead sufficient factual matter in your pleading, accepted as true, to state a
25 claim to relief that is plausible on its face, you are not required to omit any claim or
26 defendant in order to pursue this action. However, if you decide to pursue a claim
27 in a First Amended Complaint that this Court has found to be insufficient, then this
28 Court, pursuant to the provisions of 28 U.S.C. § 636, ultimately may submit to the
assigned district judge a recommendation that such claim be dismissed with
prejudice for failure to state a claim, subject to your right at that time to file
Objections with the district judge as provided in the Local Rules Governing Duties
of Magistrate Judges.

1 however, does not allege a factual or legal basis for any claim against either the
2 State of California or, to the extent that plaintiff may be intending to name Stacy
3 Gravely as a defendant, against Stacy Gravely. Further, in one of the exhibits
4 attached to the Complaint, plaintiff identifies “Stacie [sic] K. Gravely” as a
5 “prosecuting attorney” with the Los Angeles County District Attorney’s Office.
6 (ECF No. 1 at 16.) To the extent that Stacy Gravely was the prosecuting attorney in
7 a criminal case against plaintiff, prosecutors are entitled to absolute immunity from
8 damages liability when they engage in activities “intimately associated with the
9 judicial phase of the criminal process,” such as the prosecution and presentation of
10 the state’s case. *See Imbler v. Pachtman*, 424 U.S. 409, 427, 430 (1976); *see also*
11 *Ashelman v. Pope*, 793 F.2d 1072, 1075 (9th Cir. 1986) (en banc). This immunity
12 applies even if it “does leave the genuinely wronged defendant without civil redress
13 against a prosecutor whose malicious or dishonest action deprives him of liberty.”
14 *See Imbler*, 424 U.S. at 427. However, it is the nature of the function performed,
15 not the role or identity of the actor that determines the scope of absolute immunity.
16 *See Engebretson v. Mahoney*, 724 F.3d 1034, 1039 (9th Cir. 2013) (“the Supreme
17 Court has emphasized this functional approach for determining when public
18 officials may claim absolute immunity under § 1983”). Functions that are
19 prosecutorial in nature are entitled to absolute immunity “when they are intimately
20 associated with the judicial phase of the criminal process.” *Slater v. Clarke*, 700
21 F.3d 1200, 1203 (9th Cir. 2012) (internal quotation marks omitted) (citing *Van de*
22 *Kamp v. Goldstein*, 555 U.S. 335, 342 (2009)). Here, because plaintiff’s Complaint
23 fails to set forth any factual allegations against Stacy Gravely, it is unclear if
24 plaintiff is purporting to raise any claims against this potential defendant arising
25 from prosecutorial functions.

26 On the Civil Cover Sheet that he filed with the Complaint, plaintiff indicated
27 that the nature of his suit was “other fraud.” (ECF No. 1-2 at 81.) To the extent
28 that plaintiff is purporting to raise any claim of fraud, the Complaint does not meet

1 the heightened pleading standard of Fed. R. Civ. P. 9(b) in that it does not plead
2 with particularity what specific misconduct by a named defendant is alleged to have
3 constituted fraud. *See, e.g., Bly-Magee v. California*, 236 F.3d 1014, 1019 (9th Cir.
4 2001).

5 Accordingly, the Court finds that plaintiff's Complaint fails to meet the
6 minimal requirement of Rule 8 that a pleading allow each defendant to discern what
7 he or she is being sued for. *See McHenry*, 84 F.3d at 1177; *see also Twombly*, 550
8 U.S. at 555 ("[f]actual allegations must be enough to raise a right to relief above the
9 speculative level"). The Court remains mindful that, because plaintiff is appearing
10 *pro se*, the Court must construe the allegations of the Complaint liberally and must
11 afford plaintiff the benefit of any doubt. That said, the Supreme Court has made
12 clear that the Court has "no obligation to act as counsel or paralegal to *pro se*
13 litigants." *Pliler v. Ford*, 542 U.S. 225, 231 (2004). In addition, the Supreme
14 Court has held that, while a plaintiff need not plead the legal basis for a claim, the
15 plaintiff must allege "simply, concisely, and directly events" that are sufficient to
16 inform the defendants of the "factual basis" of each claim. *Johnson*, 135 S. Ct. at
17 347. Here, plaintiff's Complaint simply fails to set forth a simple, concise, and
18 direct statement of the factual or legal basis of any claim against any defendant.

19 **C. Plaintiff appears to be asserting a habeas claim**

20 Plaintiff's Complaint states that the "relief sought" is to have a Superior
21 Court case "vacated" and for plaintiff to be "discharged from the custody" of the
22 State of California. (ECF No. 1 at 13.)

23 To the extent that plaintiff is seeking to have a criminal conviction set aside,
24 a petition for habeas corpus is a prisoner's sole judicial remedy in federal court
25 when attacking "the validity of the fact or length of ... confinement." *Preiser v.*
26 *Rodriguez*, 411 U.S. 475, 489-90 (1973); *Young v. Kenny*, 907 F.2d 874, 875 (9th
27 Cir. 1990). Thus, plaintiff may not use another civil action in federal court to
28 challenge the validity of a conviction or incarceration. Such relief only is available

1 in a habeas corpus action. A civil rights complaint that appears to be seeking
2 habeas relief should be dismissed without prejudice to bringing it as a petition for
3 writ of habeas corpus. *See Trimble v. City of Santa Rosa*, 49 F.3d 583, 586 (9th
4 Cir. 1995).

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6 If plaintiff still desires to pursue this action, **he is ORDERED to file a First**
7 **Amended Complaint no later than thirty (30) days after the date of this Order,**
8 remedying the pleading deficiencies discussed above. The First Amended
9 Complaint should bear the docket number assigned in this case; be labeled "First
10 Amended Complaint"; and be complete in and of itself without reference to the
11 original Complaint, or any other pleading, attachment, or document.

12 The clerk is directed to send plaintiff a blank Central District civil rights
13 complaint form, which plaintiff is encouraged to utilize. Plaintiff is admonished
14 that he must sign and date the civil rights complaint form, and he must use the
15 space provided in the form to set forth all of the claims that he wishes to assert in a
16 First Amended Complaint. In addition, if plaintiff no longer wishes to pursue this
17 action, he may request a voluntary dismissal of the action pursuant to Federal Rule
18 of Civil Procedure 41(a). The clerk also is directed to attach a Notice of Dismissal
19 form for plaintiff's convenience.

20 Plaintiff is further admonished that, if he fails to timely file a First Amended
21 Complaint, or fails to remedy the deficiencies of this pleading as discussed herein,
22 the Court will recommend that the action be dismissed for failure to diligently
23 prosecute.

24 **IT IS SO ORDERED.**

25 DATED: 8/8/2017

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27 ALEXANDER F. MacKINNON
28 UNITED STATES MAGISTRATE JUDGE